IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.8412 OF 2005
IN
CRIMINAL APPEAL NO. OF 2005

Shri Venkatesh Traders ...Applicant.
V/s.
H.P.Traders & Ors. ...Respondents.

Shri S.R.Waghmare h/for Shri A.R.Shaikh, advs. for the Applicant.
Shri D.P.Adsule, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 2nd April, 2007.

P.C.:

1. Heard Mr.Waghmare the learned counsel for the for the Applicant. Perused the copy of the impugned judgment.

2. The applicant, who is original complainant has filed this application seeking leave to prefer appeal against the order of acquittal passed by the J.M.F.C., 2nd Court, Malegaon, on 20th May, 2005 in Summary Criminal Case No.602 of 2003 under Section 138 of the Negotiable Instruments Act. According to the applicant, the accused/respondent had purchased certain goods from the applicant and had issued two cheques dated 8-8-2002 and 14-8-2002. The applicant deposited the said cheques on 21-1-2003 for encashment. However, the cheques were dishonoured on the ground of 'insufficient funds' in the

account of the accused. During the trial it was revealed that one Pradip Hukumchand Pahade is the proprietor of H.P.Traders. The cheque was signed and issued by the said Pradip Pahade. However, the complaint was filed against his brother Subhash Hukumchand Pahade as the proprietor of H.P.Traders. The trial Court came to a conclusion that Subhash is not the proprietor nor he had issued the cheques. Therefore, he could not be held guilty for the offences punishable under Section 138 of the Negotiable Instruments Act.

3. Taking into consideration the facts and circumstances of the case, it is clear that the applicant had prosecuted a wrong person. Therefore, I find no fault with the impugned order of acquittal.

4. Leave refused. Application stands rejected.

(J.H.Bhatia,J.)